

DUPLICATE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of

RECEIVED

Review of the Commission's
Broadcast and Cable
Equal Employment Opportunity
Rules and Policies
and
Termination of the
EEO Streamlining Proceeding
Forfeiture Guidelines

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MM Docket No. 98-204 APR 15 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 96-16

To: The Commission

REPLY COMMENTS OF FISHER BROADCASTING INC.

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REPLY COMMENTS OF FISHER BROADCASTING INC.

Introduction and Summary

Fisher Broadcasting Inc. ("Fisher"), by and through its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. Fisher supports the Commission's efforts to encourage the broadcast industry to provide employment opportunities to persons of all races and ethnicities and of both genders. Indeed, it is Fisher's own goal to employ a diverse workforce that is representative of the diverse nature of the communities in which it operates. However, Fisher is concerned that some of the rules proposed by the Commission in the *Notice of Proposed Rule Making* (the "*NPRM*"), 63 Fed. Reg. 66104 (1998) in the captioned matter, as laudable as their goal might be, create burdensome and counterproductive record keeping requirements. Fisher therefore urges the Commission not to impose the requirements proposed in the *NPRM*. The Commission should instead adopt a rule consistent with the proposals in the Comments filed by the National Broadcasting Association ("NAB"). Under NAB's proposals, broadcasters

would appropriately be allowed to choose from several options to demonstrate their commitment to inclusion, race-neutral outreach and educational efforts for minorities.

Factual Background

Fisher's Broadcast Experience and EEO Efforts

1. Fisher is the licensee of television stations KOMO-TV, Seattle, Washington and KATU(TV), Portland, Oregon, as well as radio stations KOMO(AM), KVI(AM) and KPLZ(FM), Seattle, Washington and KWJJ(AM) and KWJJ-FM, Portland, Oregon. Through its subsidiary, Sunbrook Communications, Inc., it operates 20 radio stations in smaller markets in Montana and Washington. Fisher and its predecessor have owned and operated broadcast facilities in the Pacific Northwest since 1926. The company has always been locally owned and managed and has been nationally recognized for its exemplary record of commitment and service to its community. Indeed, local public service is one of its business principles. Fisher believes that such community involvement contributes to the ultimate success of its stations.

2. Specifically with respect to advancement of minorities in broadcasting, Fisher has established two scholarship funds, the Fisher Broadcasting Inc. Minority Scholarships in Seattle and the KATU/Thomas R. Dargon Minority Scholarships in Portland, to encourage and assist minority students in completing their educations in broadcasting. The Trustees of these funds are officers of Fisher and minority employees of Fisher's radio and television stations in Seattle and Portland. Each year, the Trustees of each scholarship fund select qualified recipients for scholarships. The student recipients of the scholarships are then offered paid summer employment and, upon graduation, are encouraged to apply for job openings pertaining to their field of expertise with the stations. The door of opportunities is thus opened to the recipients of

these scholarships to experience commercial radio and television broadcasting. To date, forty-two scholarships have been awarded for a total of \$109,000. During the past year, KATU hired two of the recent recipients of scholarships as regular employees.

3. In its day-to-day operations, Fisher has adopted the policy that its workforce should reflect, to the greatest degree reasonably practicable, the diverse and vibrant nature of the local populace. Fisher believes that maintenance of a diverse workforce provides access to new and insightful skills, knowledge, viewpoints and opinions which will be essential to its success in the years ahead. As part of this commitment to diversity, Fisher has the on-going goal of establishing and maintaining full "parity" with the local workforce for women and minorities at its stations, both overall and in the upper four job categories as defined by the FCC.

4. However, finding recruiting resources to provide applicant referrals has been extremely difficult. Most significant for the Commission's proposals in this case, Fisher has found that sending job opening notices to women and minority-based organizations results in a less than satisfactory response.

5. As a result, a Recruiting Committee was formed in 1988 to consider recruiting issues for Fisher as a whole. Many ideas were generated on how to address recruitment concerns, including building relationships with local, regional and national universities, developing a consortium of stations to build recruiting efforts, marketing Fisher as a whole through the Internet and trade publications, and hiring a recruiter for the company. Some of the recent steps that have resulted from the efforts of the Recruiting Committee are as follows:

6. In June of 1998, KOMO-TV sent an Hispanic male photographer to the National Association of Hispanic Journalists Convention in Miami, Florida. He not only attended

seminars, but also led workshops for minority students, established recruiting relationships with schools, and interviewed candidates interested in working at KOMO-TV.

7. During the past year, KOMO-TV created three separate training programs for women and minorities. One is a two year program to train a woman as a news photographer; the second is an eighteen month training program for a minority male to develop his skills as a computer technician; and the third is a three month program for a woman minority to train as a videographer.

8. In August 1998, KOMO-TV formally implemented the KOMO-TV/ Lloyd Jones Diversity Training Program. (The training program is named in honor of Lloyd Jones, an African American who was a long-time engineer at KOMO-TV.) The purpose of the program is to attract minorities and women to KOMO-TV in order to have a diverse workforce where both minorities and women are represented in all job classifications. In October 1998, a female minority was chosen to enter into a one-year training program as a photographer/editor. In November 1998, a minority male was selected to train as a graphic artist/ animator. These positions are paid positions with benefits, and if the training is successful will lead to regular staff positions within the station.

9. Fisher's radio stations in Portland, KWJJ-FM and KOTK (AM), created a commercial for specific job openings on their stations which encouraged women and minorities to apply. The stations also sponsored and advertised an informational radio sales seminar. At the seminar, attendees learned about marketing careers in broadcasting. As a result of the advertisement and seminar, a female minority was hired to fill an account executive vacancy.

10. The general manager of KWJJ/KOTK and the general sales manager of KVI Radio visited the College of Business at Washington State University's School of Communications in November 1998. They addressed a junior level marketing class and left materials on the stations' internship opportunities. They also conducted on-campus interviews at the Career Center and developed relationships with professors to enhance future visits to the University. Plans are underway to continue these on-site campus visits every semester.

11. Unity '99, a convention of African American, Native American, Asian American and Hispanic journalists, will be held in Seattle in July 1999. Fisher's stations will have a highly visible presence. Just as at the National Association of Hispanic Journalists Convention described in paragraph 6 above, Fisher will take an active role throughout the convention. At various times, Fisher's news directors, program managers and others operational people, not just human resources people, will be in Fisher's booth(s) at the convention. This will provide Fisher's managers and the attendees an opportunity to build relationships. Fisher's booth(s) will have audio and video equipment so that attendees can show samples of their work to Fisher's managers. Managers will also participate in fora, on panels and in presentations. Fisher has found such participation has special value in giving attendees access to managers because attendees are likely to stay after formal sessions to learn more about Fisher and its culture.

Fisher's Experience with the Commission's Former EEO Rule and Policies

12. Despite Fisher's total commitment to the goals of the Commission's former EEO Rule and policies, it believes that the record keeping aspects of those policies had developed into unintended substantive requirements in their own right whose purpose had become completely divorced from the purposes of the EEO rule.

13. In 1994, Fisher acquired radio stations KVI (AM) and KPLZ-FM, Seattle, Washington. The stations were subject to EEO reporting conditions imposed as a result of an evaluation of the stations' employment record during the prior renewal term when they were under previous ownership. Although Fisher played no role in the employment practices that led to the imposition of reporting conditions at the stations, as a condition of the FCC's grant of the assignment of the stations' licenses to Fisher, Fisher assumed the reporting obligations (as was customary). At the time Fisher consummated the acquisition of the stations, only four months were left before the first year's report was due. Thus, information reported in the first report was based on eight months of ownership by the prior licensee. When Fisher filed the first report, it submitted fourteen pages of material detailing the receipt by the stations of 127 applications for only ten job openings and the use of more than 35 recruitment sources. Of the 127 applicants, 58 were women and 11 were identifiable minorities. By the time of the first report, Fisher employed minorities far in excess of their proportionate representation ("parity") in the local labor force, with African-Americans at 329% of parity, Hispanics at 154% of parity and women at 89% of parity.

14. Despite its efforts to recruit and employ minorities and women, Fisher received a letter from the Commission's EEO Branch stating, *inter alia*:

It appears that efforts were made to recruit minorities for vacancies as they occurred; however minorities are not applying for vacancies in large numbers. Also, more emphasis should be placed on adequate record keeping procedures. Therefore, your recruitment techniques must be altered to assure that more qualified minorities are being included in applicant pools and that better tracking procedures are implemented to analyze the effectiveness of the stations' EEO program.

Footnote omitted. The Commission's guideline requiring licensees to "recruit so as to attract an

adequate pool of minorities,” had become “recruit so as to attract a *large* number of minorities.”

15. In a footnote, the Commission pointed out that the report did not identify the race of 52 of the applicants or the referral source for 49 of the applicants. Fisher’s difficulties in collecting applicant tracking data, however, resulted from a strict antidiscrimination state law which severely curtails EEO data collecting, and the fierce individualism of many in the Pacific Northwest, minority and non-minority alike, that flatly rejects the notion that there could ever be any legitimate reason for collecting this data. While the FCC had stated that its EEO record keeping requirements pre-empt state and local laws aimed at preventing such data collection, the FCC’s argument held little sway with state regulators or the population at large. Under Washington State law, the Fisher stations may not require applicants to provide information identifying their race or gender. Fisher had, with some difficulty and legal expense, convinced state officials to allow it to use a standard form, separate from the employment application, to request EEO tracking data. At the insistence of state officials, however, the form carries a prominent disclaimer making clear that the applicant need not provide the EEO tracking information and that the applicant’s failure to provide such information will not adversely affect consideration of the applicant for employment. Response to the form is, not surprisingly, poor. The stations had forwarded a follow-up letter to applicants who do not respond to the form which informed the applicant that the stations needed to supply the information, in an aggregate form, to the FCC and urged applicants’ voluntary compliance. Response to the follow-up letter was also poor.

16. As a result, when it came time for Fisher to submit the second report pursuant to the reporting conditions, while its efforts and results were impressive, its ability to track the race

and gender of applicants had not improved. Follow-up letters and phone calls did not generate an acceptable self-classification rate. Ultimately, to secure the information the FCC sought, Fisher conducted a telephone survey of the previous year's job applicants. To encourage former applicants to provide the FCC mandated racial and gender identifications, those who agreed to respond to the EEO data collection questionnaire were placed in a drawing for a free weekend at a nearby resort along with cash for incidental expenses. Obviously, response to the EEO tracking questions increased; but there were still some applicants who refused to participate.

17. Fisher's second annual EEO report pursuant to the reporting conditions consisted of some 47 pages of information detailing the stations' hiring practices for its ten job openings in the previous year. Five of these pages were spent explaining the difficulty Fisher had in collecting the EEO tracking data and its resort to giving away a prize to encourage responses to the EEO tracking questionnaire. The report also showed that the stations used more than 30 referral sources and received 235 applications for these ten job openings.

18. In furtherance of its efforts to address the criticisms in the FCC's response to Fisher's first EEO report, Fisher brought its Washington, D.C. communications counsel to Seattle and hired a nationally recognized human resources consultant. Fisher conducted an audit of the company's existing human resources practices and designed new practices to reinforce EEO procedures and record keeping. This was a major undertaking resulting in several multi-day work sessions in Seattle in which Fisher's senior corporate and station management, human resources management, FCC counsel and human resources personnel participated. The time and expense invested in this operation was significant.

19. Fisher's experiences in this area illustrate how the record keeping requirements had turned into substantive rules with no relation to real EEO efforts, and also show the burdens that the Commission's former EEO record keeping requirements placed on broadcasters. KVI(AM) and KPLZ(FM) had to track approximately 200 applications and monitor 30 or more referral sources each year. At Fisher's television stations, network affiliates in major markets, the task was much larger. While it was not easy, Fisher at least has the depth of bench to have been able to deploy the manpower and financial resources necessary to have met the Commission's expectations under its former EEO rule. However, the effort involved in a rigorous program such as Fisher's, as would seem to be required under the new EEO Rule proposed in the *NPRM*, would be overwhelming.

Proposals

20. A new EEO rule should be designed in light of the fact that significant progress has been made in expanding awareness by men and women of all races and ethnicities of the career opportunities within broadcasting. It is easier for the general public to obtain information about the broadcasting industry. Through the efforts of the FCC, broadcasters, educational institutions and affinity groups, more women and people of color consider broadcasting as a career option. Industry leaders in broadcasting, like their counterparts in other industries, have looked at our nation's changing demographics and have made and will continue to make the necessary efforts to insure that they have a diversity both of opinion in their programming and in their workforce, not because of the urging of the FCC but because it makes good business sense. The concern raised in the *NPRM* regarding the inclusion of wider community perspectives in news and programming has been and will increasingly be addressed not by relying on low or

high level employees to insinuate broader community views or other social agendas, but by specific focus group and outreach efforts that stem from the business reality of keeping competitive.

21. Fisher believes that an EEO Rule must be designed so that it will be seen as a way to do business by broadcasters, as it is in other influential industries. Moreover, the Commission's new EEO rule should acknowledge that programs that address inclusion issues from broad perspective and that have multiple action agendas will have the best chance of engendering commitment, rather than merely compliance, within the industry. Broadcasters need to follow the same local, state and federal regulations that relate to employment laws as do their neighbors. In addition, like the leaders in any community, broadcasters need to not only follow the laws but be seen as publicly committed to the laws and their principles.

22. In order to show a commitment to EEO, broadcasters will need to continue outreach efforts to broaden the awareness of broadcasting and the many career opportunities within the industry. But broadcasters should be able to choose from several options to demonstrate this commitment to inclusion, race-neutral outreach and educational efforts, including designing their own programs. Thus, broadcasters should be viewed as in compliance with the Commission's EEO requirements if they comply with:

- a) The Office of Federal Contract Compliance Program ("OFCCP") EEO regulations; or
- b) The Model "Broadcast Careers Program" developed by the Broadcast Executive Association for state broadcasting associations; or

- c) A self designed program that includes some combination of participation at job fairs, high school and college career days; posting jobs on line as part of local and national web sites; and work with broadcast affinity groups and local professional associations. Such a program could also include special scholarship programs, paid internships, and internal training programs that are open to all staff and help broaden and advance careers, all of which will help ensure inclusion.

Fisher believes, for example, that the program it has designed and which is described in ¶¶ 2-12 above should be considered to be a self designed program that is in full compliance with any EEO requirements that the Commission may impose. As noted in ¶ 4 above, Fisher has found that sending job opening notices to women and minority-based organizations results in a less than satisfactory response. There is surely no reason to impose a requirement that Fisher rely on steps it has found do not work in lieu of the effective alternative steps that Fisher has designed.

23. Broadcasters should be required to select one of the options for compliance described in ¶ 21 above every two years and at the same time to certify that they have complied during the previous two years with the EEO compliance program they had previously elected. The Commission should understand and acknowledge that a broadcaster's efforts must be proportional to its size as a total entity. Stations should document their compliance with the option of their choice and keep this information in the public files. The FCC may audit these efforts but should only review them at the time of renewal unless circumstances warrant further scrutiny.

24. Stations should *not* be required to keep records of the race and gender of applicants for specific jobs. As explained above in ¶¶ 13-18, such record keeping requirements

are unduly burdensome and Fisher's experience shows that they are counterproductive. There is simply no justification for imposing these burdens on, for example, a company such as Fisher that has taken the steps outlined in ¶¶ 2-12 above.

25. In terms of record keeping, Fisher notes that where a station or broadcaster has 100 full or part-time employees it must file an EEO-1 statement with the EEOC. Fisher suggests that a new EEO rule provide that where a broadcaster has less than 100 employees, it can *voluntarily* file with the FCC an EEO-1 statement. Stations of any size should have the option of including this statement in their public files.

26. If the Commission is concerned about "industry trends" in the employment of women and minorities, it should ensure that 395-B forms be filed on a confidential basis with a third party designated to track and report on the results for the Commission. Only in this way can the Commission ensure that the forms are not used for the improper purpose of comparing a station's workforce to the general population and then making spurious allegations of EEO violations. Such allegations create wrongful pressure on stations to hire a certain number of minorities and women and should not be condoned by the Commission.

27. Fisher believes that broadcasters should be subject to EEO laws; and that where alleged or real violations occur, the EEOC and the courts should bring about resolution. Further, the FCC should not use information about EEO charges in licensing decisions unless there has been a finding against the broadcaster by the EEOC or a court that warrants a sanction on the license.

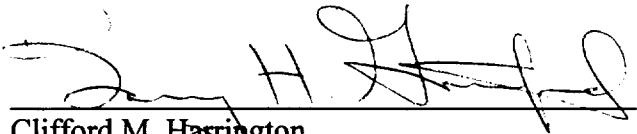
28. In sum, the goals of a new EEO Rule should be the elimination of useless record keeping and an emphasis on effective race-neutral outreach steps that can be seen by broadcasters

as part of their commitment to operate in the public interest. By using information about individual stations that is kept confidential, the Commission can look at trends across the industry and begin to compare broadcasting results with results in other key industries.

Respectfully submitted,

FISHER BROADCASTING INC.

By:

A handwritten signature in black ink, appearing to read "Clifford M. Harrington", is written over a horizontal line.

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